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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91199186
Party	Plaintiff Showtime Networks Inc.
Correspondence Address	CHRISTOPHER P BEALL LEVINE SULLIVAN KOCH & SCHULZ LLP 321 WEST 44TH STREET, SUITE 510 NEW YORK, NY 10036 UNITED STATES trademarks@cbs.com
Submission	Motion to Compel Discovery
Filer's Name	Christopher P. Beall
Filer's e-mail	cbeall@lskslaw.com
Signature	/s Christopher P. Beall/
Date	09/29/2011
Attachments	00442804.PDF (5 pages)(184654 bytes) 00442808.PDF (34 pages)(822683 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**



Trademark: **MY PHONE FLIX** and
Applications: 77/933,144 and 77/929,853
Filed: February 6, 2010 and February 11, 2010
Published: November 20, 2010

SHOWTIME NETWORKS INC.

Opposition No. **91199186**

Opposer,

v.

DMA INTERNATIONAL LLC,

Applicant.

OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES BY APPLICANT

Opposer Showtime Networks Inc., pursuant to Rule 37(d)(1)(A)(ii) of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120(e)(1), hereby respectfully moves for entry of an order from the Board compelling Applicant DMA International LLC (“Applicant”) to provide responses to the pending interrogatories and requests for production of documents, both of which discovery requests were served on Applicant on August 4, 2011¹ and to which the Applicant has provided no response of any kind.

In support of this motion, Opposer states as follows:

¹ Opposer served its disclosures under Fed. R. Civ. P. 26(a)(1) on the same day, August 4, 2011. (Beall Decl. ¶ 2.)

1. **Certificate of Conferral.** Pursuant to Fed. R. Civ. P. 37(a)(1), undersigned counsel for Opposer certifies that he has attempted to confer in good faith with Applicant regarding the matters raised herein. Prior to the deadline for responding to the discovery requests, undersigned counsel contacted Applicant and suggested that the parties confer regarding the issues in the case in the interest of the Applicant avoiding the expense of preparing its discovery responses. (*See* Declaration of Christopher Beall, ¶ 5, filed herewith as **Exhibit A**, and accompanying Attachment 3.) The Applicant did not respond to this inquiry. (*Id.* ¶ 6.) On September 19, 2011, ten days after the deadline for service of the Applicant's discovery responses to Opposer (*i.e.*, September 9, 2011), undersigned counsel forwarded to Applicant a formal deficiency notice as to Applicant's failure to produce any discovery responses, and therein demanded full responses to Opposer's discovery requests. (Beall Decl. ¶ 10 and Attachment 4.) In that correspondence, Opposer's counsel warned Applicant that failure to provide complete discovery responses would result in Opposer pursuing a motion to compel. (*Id.*) Applicant again failed to respond to that communication.² (*Id.* ¶ 11)

2. **Verbatim recitation of discovery requests.** A complete set of the discovery requests at issue in this Motion, *i.e.*, Opposer's First Set of Interrogatories and Opposer's First Set of Request for Production are attached to the Beall Declaration as Attachments 1 and 2, and are incorporated here by reference.³

² Opposer notes that Applicant also is not in compliance with the scheduling order in this case, in that it has failed to serve its Rule 26(a)(1) disclosures. (Beall Decl. ¶ 13.) The deadline for such service under the scheduling order was August 6, 2011.

³ At the same time that it served the discovery requests at issue here, Opposer also served its First Set of Requests for Admission. (Beall Decl. ¶ 3.) Applicant also has failed to respond to those requests. (*Id.* ¶ 8.) However, because the Applicant's non-response to those requests automatically constitutes an admission of the

Continued on following page:

3. **Failure to respond.** The failure to provide timely responses to a party's written discovery requests constitutes a violation of Fed. R. Civ. P. 33(b)(2) and 34(b)(2)(A) and subjects the non-responding party to an order to compel. *See* TBMP § 411.02. In this case, Applicant has failed to comply with its discovery obligations, has failed to request an extension of time, and has continually failed to communicate with opposing counsel in any way. Under such circumstances, Applicant should be ordered to provide full and complete responses to the pending interrogatories and requests for production, upon pain of sanctions for non-compliance. *See Jain v. Ramparts Inc.*, 49 USPQ2d 1429 (TTAB 1998).

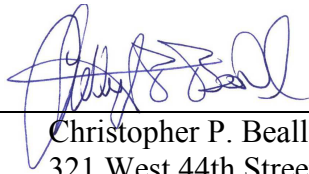
WHEREFORE, Opposer Showtime Networks Inc. respectfully requests that the Board enter an order requiring Applicant to provide complete responses to Opposer's interrogatories and requests for production of documents by a date certain.

Continued from previous page . . . :

requests, pursuant to the operation of Fed. R. Civ. 37(a)(3), Opposer is not seeking further relief in this Motion with respect to Applicant's failure to respond to the requests for admission. *See Giersch v. Scripps Networks Inc.*, 85 USPQ2d 1306 (TTAB 2007).

Respectfully submitted this 29th day of September, 2011.

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.



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lapel@lskslaw.com; jcarlsen@lskslaw.com

Attorneys for Opposer
Showtime Networks Inc.

CERTIFICATE OF SERVICE

I do hereby certify that on this 29th day of September, 2011, a true and correct copy of the foregoing **OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES BY APPLICANT** has been transmitted by United States Postal Service first class mail, postage prepaid, with a courtesy electronic copy also delivered by e-mail transmission, to:

Min Yi Chen
DMA International LLC
1602 Belle View Boulevard, Suite 440
Alexandria, VA 22307-6531
Dmaintllc@gmail.com

Mallory Levitt, Esq.
CBS – Law Department
51 West 52nd Street
New York City, New York 10019
Mallory.Levitt@cbs.com

/s Christopher P. Beall

Exhibit A

to

**OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES BY
APPLICANT**

(Declaration of Christopher P. Beall, with attachments)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**



Trademark: **MY PHONE FLIX** and
Applications: 77/933,144 and 77/929,853
Filed: February 6, 2010 and February 11, 2010
Published: November 20, 2010

SHOWTIME NETWORKS INC.

Opposition No. **91199186**

Opposer,

v.

DMA INTERNATIONAL LLC,

Applicant.

**DECLARATION OF CHRISTOPHER P. BEALL
IN CONNECTION WITH
OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES BY APPLICANT**

Pursuant to 28 U.S.C. § 1746, I, **Christopher P. Beall**, state as follows:

1. I am a partner of the law firm of Levine Sullivan Koch & Schulz, L.L.P. ("LSKS"), and I am counsel of record for Opposer Showtime Networks Inc. I submit this Declaration in support of Opposer's Motion to Compel Discovery Responses by Applicant. This Declaration is based on my personal knowledge and my review of the file in this matter.
2. Opposer served its initial disclosures in this case on August 4, 2011.

3. Also on August 4, 2011, Opposer served its written discovery requests in this case, which requests were Opposer's First Set of Interrogatories, Opposer's First Set of Requests for Production, and Opposer's First Set of Requests for Admission.

4. True and complete copies of Opposer's interrogatories and document requests are attached here as Attachments 1 and 2.

5. On August 31, 2011, I contacted the Applicant's representative to request a conference to discuss the case in the interest of avoiding the expense of the Applicant's discovery responses. A true and correct copy of my email message to Ms. Min Yi Chen is attached here as Attachment. 3.

6. I received no response from Ms. Chen or anyone else on behalf of the Applicant regarding this inquiry. (I also did not receive any email notice indicating that my message had not been delivered or otherwise was not received.)

7. The deadline for the Applicant's responses to Opposer's discovery requests was September 9, 2011.

8. Opposer has not received any responses to its discovery requests.

9. Applicant has neither filed nor otherwise requested any extensions of time with respect to the deadline for its discovery responses.

10. On September 19, 2011, I notified Applicant of its deficiencies in failing to respond to Opposer's discovery requests, and requested that Applicant provide its responses promptly. A true and correct copy of my letter of September 19, 2011 is attached here as Attachment 4.

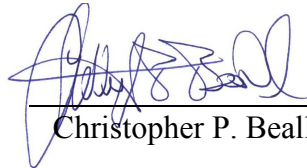
11. I received no response from Ms. Chen or anyone else on behalf of the Applicant regarding this correspondence.

12. Applicant has made no contact with me with respect to any matter in this case.

13. In addition, Applicant has not served Opposer with any disclosures under Fed. R. Civ. P. 26(a)(1)..

14. I declare under penalty of perjury that the he foregoing is true and correct to the best of my knowledge.

Dated: September 29, 2011
New York, N.Y.



Christopher P. Beall

Attachment 1

to

**DECLARATION OF CHRISTOPHER P. BEALL
IN CONNECTION WITH OPPOSER'S MOTION TO COMPEL**

(Copy of Opposer's First Set of Interrogatories)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**



Trademarks: **MY PHONE FLIX** and
Applications: 77/933,144 AND 77/929,853
Filed: February 6, 2010 and February 11, 2010
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SHOWTIME NETWORKS INC.

Opposition No. **91199186**

Opposer,

v.

DMA INTERNATIONAL LLC,

Applicant.

OPPOSER'S FIRST SET OF INTERROGATORIES

Propounding Party: **OPPOSER SHOWTIME NETWORKS INC.**

Responding Party: **APPLICANT DMA INTERNATIONAL LLC**

Set No.: **ONE**

PLEASE TAKE NOTICE that Opposer Showtime Networks Inc. ("Opposer") requests, pursuant to Federal Rule of Civil Procedure 33 and 37 C.F.R. § 2.120, that Applicant DMA International LLC ("Applicant") answer the following interrogatories under oath within thirty (30) days of the date of service hereof.

Definitions and Instructions

1. The terms “You” and “Your” when used herein refer to Applicant DMA International LLC (“Applicant”) and all employees, agents, or representatives of Applicant, as well as any corporations, companies, partnerships, or any other business entity affiliated in any way with Applicant. In answering these interrogatories, You are required to provide not only such information as is known to You, Your agents, and Your affiliates, but also information that is in the possession of Your attorneys, legal assistants, investigators, and anyone else acting on Your behalf, under Your control, or working cooperatively with You.

2. The term “Applicant’s Marks” when used herein refers to the trademark “**MY PHONE FLIX**”, in any form or visual presentation, as well as any verbal presentation.

3. The term “Applicant’s Applications” when used herein refers to the application for registration that Applicant filed with the U.S. Patent and Trademark Office (“PTO”) on February 6, 201 and February 11, 2010, in connection with Applicant’s Marks, listed as Appl. Ser. Nos. 77/933,144 and 77/929,853.

4. The term “Opposer’s Marks” means each and every mark, both collectively and individually, that is identified as being owned by Opposer in Opposer’s Notice of Opposition filed in this case on March 29, 2011, including the any variation of the mark **FLIX**[®].

5. The term “Document” when used herein refers to writings and recordings, as defined in Federal Rule of Evidence 1001, and includes the originals and all copies of handwriting, typing, key-stroking, recording, printing, photocopying, photographing, and every other means of recording upon any tangible thing or any form of communication or representation, including letters, words, pictures, sounds, symbols, magnetic impulses, electronic

recordings, or combinations thereof. This definition applies to all documents of which You have any knowledge or information, irrespective of who has possession, custody, or control of the particular document, and irrespective of who prepared, generated, or signed the document.

6. The term “Person” when used herein includes any natural human being as well as any firm, corporation, joint venture, association, entity or group of individuals.

7. The term “Identify” when used herein with respect to an entity or organization, as opposed to an individual, means to state the full name or title of the entity or organization, its principal place of business, the nature or type of entity, if known, and its principal business.

8. The term “Identify” when used herein with respect to an individual Person means to state such Person’s full name and any nicknames or aliases, his present home address, present home telephone number, present or last-known business address, job description, business telephone number, employer, and title.

9. The term “Identify” when used herein with respect to a Document means to state the nature of the Document, its date, its author, the Person to whom it is addressed, its title, the subject matter of the Document, the location of the Document, the identity of its custodian, whether or not it is claimed that such Document is privileged, and if so, the type of privilege claimed and a statement of all the circumstances un which Applicant will rely to support such claim of privilege. When asked to Identify a particular Document or category of Documents, in lieu of doing so, You may furnish as an exhibit to Your responses to these interrogatories a copy of the Document, designating with respect to each such Document furnishes, the specific interrogatory to which the Document is responsive.

10. The phrase “Describe In Detail” when used herein means to state with specificity each and every fact, ultimate fact, particular circumstance, incident, act, omission, detail, event, and date concerning the matter inquired of.

11. The phrase “State All Facts” when used herein calls for You to state each and every fact known or available to You, including, but not limited to all evidence, contentions, and opinions that You, Your attorneys, legal assistants, investigators, and all Persons acting on Your behalf, under Your control, or working cooperatively with You, have or hold.

12. When responding to these Interrogatories, You should take any request phrased in the conjunctive to also refer to the disjunctive, and vice versa. The word “each” includes the word “every,” and the word “every” includes the word “each.” The word “all” includes the word “any,” and the word “any” includes the word “all.” If a request is phrased in the singular, it also is to be taken in the plural, and vice versa. Any pronoun means both the masculine and feminine, as well as the neuter gender, as may be apparent in each case.

13. If You cannot answer any Interrogatory in full, after exercising due diligence to secure the information to do so, please so state and answer the interrogatory to the extent possible, specifying any inability to answer the remainder of any such interrogatory and stating whatever information or knowledge is currently available to You concerning the unanswered portion of that interrogatory.

14. These Interrogatories seek answers as of this date, but they are also deemed to be continuing, such that any additional information, Documents, or things relating in any way to these interrogatories which You acquire or becomes known to You after Your initial responses

and through the time of the testimony period in this matter must be furnished to Opposer immediately after Your discovery of such information, Documents, or things.

Interrogatories

Interrogatory No. 1:

Please Identify all Persons (including any business entities) that have or had any ownership interest, in full or in part, in Applicant's Marks, including the dates for any period of ownership by such Persons and the nature of their ownership interest.

Interrogatory No. 2:

Please Describe In Detail how Applicant's Marks were first conceived, including in such description the dates when the mark was first conceived, the individuals involved in the conception, where the conception(s) occurred, and any individuals who have knowledge of the conception(s).

Interrogatory No. 3:

Please Describe In Detail any trademark searches that Applicant conducted or authorized in connection with Applicant's Marks.

Interrogatory No. 4:

Please Describe In Detail all uses in commerce that Applicant has made of Applicant's Marks.

Interrogatory No. 5:

Please Describe In Detail all uses in commerce that Applicant intends to make of Applicant's Marks in the future, as well as any uses in commerce that the Applicant previously intended to make but which Applicant no longer intends.

Interrogatory No. 6:

Please Identify all current and former employees or agents or representatives of Applicant whom You believe have or may have any knowledge regarding any use in commerce that Applicant has made or intends to make or previously intended to make of Applicant's Marks.

Interrogatory No. 7:

Please Identify any Person (including any business entities) with whom Applicant has transacted business under Applicant's Marks.

Interrogatory No. 8:

Please Identify any Person (including any business entities) to whom Applicant has licensed or otherwise authorized use of Applicant's Mark, including in this response the nature of the license or authorization that permits the Person to use Applicant's Mark.

Interrogatory No. 9:

Please Describe In Detail any licenses Applicant has offered, negotiated, or approved for use of Applicant's Marks but which did not culminate in a formal license or did not authorize result in actual use of Applicant's Marks, including in this response the nature of the proposed or considered license or authorization.

Interrogatory No. 10:

Please state the amount, broken down by month and year, spent by Applicant on any advertising, promotion, or marketing in which Applicant's Marks has been used, including in this response the specific media, publication or broadcast, and distribution of any such advertising, promotion, or marketing.

Interrogatory No. 11:

Please state the amount, broken down by month and year and then by category of goods or service, of any sales or revenues generated by the goods or services offered in connection Applicant's Marks, including (without limitation) in addition to any other revenues those revenues for advertising placed on any website where Applicant's Marks are displayed..

Interrogatory No. 12:

Please state the number, broken down by month and year and then by specific website URL address, of unique visitors to any website at which the Applicant's Marks are or were displayed.

Interrogatory No. 13:

Please state the meaning, connotation, and commercial impression created by Applicant's Marks, as well as the commercial impression that Applicant intends to create by Applicant's Marks.

Interrogatory No. 14:

Please Identify all goods and services offered, sold, distributed, rendered or performed by Applicant, or intended to be offered, sold, distributed, rendered or performed by Applicant, in connection with Applicant's Marks.

Interrogatory No. 15:

Please Describe in Detail any occasion when any Person mentioned, referred, indicated, or discussed with You any connection or similarity between Applicant's Marks and Opposer's Marks.

Interrogatory No. 16:

Please Describe in Detail any occasion when any Person mentioned, referred, indicated, or discussed with You how Applicant's Marks called to mind either Opposer's Marks or goods with which Opposer's Marks are associated.

Interrogatory No. 17:

Please Identify all advertisements, press releases, or other promotional materials in any media that Applicant has prepared or caused to be prepared which contain or display Applicant's Marks or contain or display trade names incorporating Applicant's Marks.

Interrogatory No. 18:

Please Identify all publications that Applicant has prepared or caused to be prepared which contain or display Applicant's Marks or contain or display trade names incorporating Applicant's Marks.

Interrogatory No. 19:

Please Describe In Detail any occasion when any goods or services offered by Applicant under Applicant's Marks have been the subject of criminal or administrative investigation by any law enforcement or regulatory agency.

Interrogatory No. 20:

Please State All Facts that You contend negate Opposer's allegation that Applicant's Marks are similar to Opposer's Marks.

Interrogatory No. 21:

Please Describe In Detail all channels of trade that are or will be used in connection with Applicant's Marks.

Interrogatory No. 22:

Please Identify the target market for the goods or services that Applicant is offering or intends to offer in connection with Applicant's Marks.

Interrogatory No. 23:

Please State All other Facts that You contend negate Opposer's allegation that there is a likelihood of confusion between Your use of Applicant's Marks and Opposer's Marks.

Interrogatory No. 24:

Please State All other Facts that support any other defense You have raised or intend to raise in this proceeding.

Interrogatory No. 25:

Please Identify all polls, studies, surveys, or investigations ever conducted or authorized by You with respect to Applicant's Marks or Opposer's Marks.

Interrogatory No. 26:

Please Identify every Person whom You believe has knowledge concerning the subject matter of this proceeding, and with respect to each such Person, describe the basis of that Person's knowledge and the topics of such knowledge.

Interrogatory No. 27:

Please Identify every Person through whom You intend to offer expert testimony pursuant to Federal Rule of Evidence 702.

Interrogatory No. 28:

With respect to Your responses to the separate Requests for Admission that have also been served upon You in this proceeding, other than in connection with those responses where You have responded with an unqualified admission, please State All Facts that support Your denial of the request and/or Your qualification of Your response.

Interrogatory No. 29:

Please Identify every Person other than your counsel who has assisted You in preparing Your responses to these interrogatories.

Respectfully submitted this ____ day of _____, 2011.

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

Christopher P. Beall
321 West 44th Street, Suite 510
New York, New York 10036
(212) 850-6100
E-mail - cbeall@lskslaw.com;
lapel@lskslaw.com; jcarlsen@lskslaw.com

Attorneys for Opposer
Showtime Networks Inc.

CERTIFICATE OF SERVICE

I do hereby certify that on this ____ day of _____, 2011, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES** has been transmitted by United States Postal Service first class mail, postage prepaid, with a courtesy electronic copy also delivered by e-mail transmission, to:

Min Yi Chen
DMA International LLC
1602 Belle View Blvd., Suite 440
Alexandria, VA 22307-6531

Mallory Levitt, Esq.
CBS – Law Department
51 West 52nd Street
New York City, New York 10019
Mallory.Levitt@cbs.com; trademarks@cbs.com

/s Christopher P. Beall

Attachment 2

to

**DECLARATION OF CHRISTOPHER P. BEALL
IN CONNECTION WITH OPPOSER'S MOTION TO COMPEL**

(Copy of Opposer's First Set of Requests for Production)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**



Trademark: **MY PHONE FLIX** and
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SHOWTIME NETWORKS INC.

Opposition No. **91199186**

Opposer,

v.

DMA INTERNATIONAL LLC,

Applicant.

OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION

Propounding Party: **OPPOSER SHOWTIME NETWORKS INC.**

Responding Party: **APPLICANT DMA INTERNATIONAL LLC**

Set No.: **ONE**

PLEASE TAKE NOTICE that Opposer Showtime Networks Inc. (“Opposer”) requests, pursuant to Federal Rule of Civil Procedure 34 and 37 C.F.R. § 2.120, that Applicant DMA International LLC (“Applicant”) respond to the following requests for production in writing within thirty (30) days of the date of service hereof, providing with such responses all responsive

documents and things within the scope of these requests, at the offices of counsel for Opposer, Levine Sullivan Koch & Shultz, L.L.P., 321 West 44th Street, Suite 510, New York, NY 10036.

Definitions and Instructions

1. The terms “You” and “Your” when used herein refer to Applicant DMA International LLC (“Applicant”) and all employees, agents, or representatives of Applicant, as well as any corporations, companies, partnerships, or any other business entity affiliated in any way with Applicant. In answering these interrogatories, You are required to provide not only such information as is known to You, Your agents, and Your affiliates, but also information that is in the possession of Your attorneys, legal assistants, investigators, and anyone else acting on Your behalf, under Your control, or working cooperatively with You.

2. The term “Applicant’s Marks” when used herein refers to the trademark “**MY PHONE FLIX**”, in any form or visual presentation, as well as any verbal presentation.

3. The term “Applicant’s Applications” when used herein refers to the applications for registration that Applicant filed with the U.S. Patent and Trademark Office (“PTO”) on February 6, 2010 and February 11, 2010, in connection with Applicant’s Marks, listed as Appl. Ser. Nos. 77/933,144 and 77/929,853.

4. The term “Opposer’s Marks” means each and every mark, both collectively and individually, that is identified as being owned by Opposer in Opposer’s Notice of Opposition filed in this case on March 29, 2011, including the any variation of the mark **FLIX®**.

5. The term “Document” when used herein refers to writings and recordings, as defined in Federal Rule of Evidence 1001, and includes the originals and all copies of handwriting, typing, key-stroking, recording, printing, photocopying, photographing, and every

other means of recording upon any tangible thing or any form of communication or representation, including letters, words, pictures, sounds, symbols, magnetic impulses, electronic recordings, or combinations thereof. This definition applies to all documents of which You have any knowledge or information, irrespective of who has possession, custody, or control of the particular document, and irrespective of who prepared, generated, or signed the document.

6. The term “Person” when used herein includes any natural human being as well as any firm, corporation, joint venture, association, entity or group of individuals.

7. When responding to these requests, You should take any request phrased in the conjunctive to also refer to the disjunctive, and vice versa. The word “each” includes the word “every,” and the word “every” includes the word “each.” The word “all” includes the word “any,” and the word “any” includes the word “all.” If a request is phrased in the singular, it also is to be taken in the plural, and vice versa. Any pronoun means both the masculine and feminine, as well as the neuter gender, as may be apparent in each case.

8. All Documents are to be produced whether in Your possession, custody or control, or the possession, custody or control of Your attorneys, investigators, agents or representatives.

9. All Documents are to be segregated and referenced to the request to which they respond, in accordance with Federal Rule of Civil Procedure 34.

10. If You cannot respond to any request in full, after exercising due diligence to secure the Document(s) or thing requested, please so state and respond to the request to the extent possible, specifying any inability to provide any particular Document falling within the

scope of the request and producing whatever Document(s) or thing(s) is currently available to You.

11. If You withhold any Document on the basis that You contend it is properly entitled to a limitation on discovery, You must then produce a list of such Documents being withheld, indicating the following for each such Document:

- a. The name of the writer, sender or initiator of the Document,
- b. The name of the recipient, address or party for whom the Document was intended,
- c. The date of the Document, if any, or an estimate thereof (so indicated as an estimate) if no date appears on the Document,
- d. The general subject matter of the Document sufficient to identify the Document,
- e. The present location of the Document,
- f. The identity of the custodian of the Document, and
- g. The basis on which You assert that the Document is not subject to discovery.

12. If any Document or thing falling within the scope of these requests is no longer within your custody, possession or control, You must describe all the circumstances, including the date, when lost custody, possession or control of the Document or thing.

13. Whenever a request requires the production of a Document that exists in electronic form, such as an email message or a computer file, You should produce a hard copy of the Document in paper form and You should preserve the original electronic form of the

Document for purposes of inspecting any metadata accompanying the electronic file, as may be subsequently requested by Opposer. Under no circumstances should You modify an electronic Document that is responsive to these requests such that the current metadata of that electronic file is destroyed or lost.

14. These requests seek Documents and things as of this date, but they are also deemed to be continuing, such that any additional Documents or things relating in any way to these requests which You acquire or become known to You after Your initial responses and continuing through the time of the testimony period in this matter must be furnished to Opposer immediately after Your discovery of such Documents or things.

Requests for Production

Request No. 1:

Please produce all Documents reviewed in the course of preparing Your responses to the Opposer's interrogatories and requests for admission in this proceeding.

Request No. 2:

Please produce all Documents identified in Your responses to the Opposer's interrogatories in this proceeding.

Request No. 3:

Please produce all Documents identified, listed or referenced in any disclosure by You under Fed. R. Civ. P. 26(a)(1) or 26(e).

Request No. 4:

Please produce any articles of incorporation or organization for any business entity that has ever held any amount of ownership interest in Applicant's Marks.

Request No. 5:

Please produce any news clipping, copy of newspaper or magazine story, copy of internet publication, or recording of electronic broadcast in Your possession that refers or relates to any business entity or proprietorship in which You have a controlling ownership interest.

Request No. 6:

Please produce all non-privileged Documents on which Applicant's Marks or any similar mark, appears. (In connection with multiple copies of duplicate Documents, or products, that bear the mark, only a single specimen of each such item need be produced.)

Request No. 7:

Please produce a specimen of every good or service which You have sold or offered for sale or promoted under Applicant's Marks.

Request No. 8:

Please produce a specimen of every advertisement for any product or service which You have provided or offered to provide under Applicant's Marks.

Request No. 9:

Please produce an electronic copy of any website at which the Applicant's Marks are displayed.

Request No. 10:

Please produce all Documents that refer or relate to Your conception of Applicant's Marks.

Request No. 11:

Please produce any correspondence with any person not acting as Your legal counsel referring or relating to Applicant's Marks.

Request No. 12:

Please produce any non-privileged Document referring or relating to any other mark You have considered for use in connection with the goods or services you currently provide under Applicant's Marks.

Request No. 13:

Please produce any correspondence with any person not acting as Your legal counsel that refers or relates to the dispute in this opposition proceeding.

Request No. 14:

Please produce all reports on any trademark search that You conducted or authorized in connection Applicant's Marks or any similar mark.

Request No. 15:

Please produce all licenses, permissions, approvals, consents, or agreements for use of Applicant's Marks.

Request No. 16:

Please produce any non-privileged Documents relating to any potential licenses or agreements for use of Applicant's Marks where the license or agreement was not ultimately consummated.

Request No. 17:

Please produce business records sufficient to ascertain the monthly revenues generated by any product or service that was sold or offered in connection with Applicant's Marks.

Request No. 18:

Please produce any non-privileged Documents in Your possession referring or relating to Opposer's Marks.

Request No. 19:

Please produce any non-privileged Document that reflects, depicts, evidences or otherwise relates to Your awareness of Opposer's Marks.

Request No. 20:

Please produce Documents sufficient to show the channels of trade in which You currently sell or offer for sale any goods or services in connection with Applicant's Marks, and those channels of trade in which You intend to sell or offer for sale any goods or services in connection Applicant's Marks.

Request No. 21:

Please produce any non-privileged Documents that refer or relate to Your proposed or actual long-term and short-term business plans for use of Applicant's Marks.

Request No. 22:

Please produce any non-privileged Documents that refer or relate to any marketing plan for use of Applicant's Marks.

Request No. 23:

Please produce any non-privileged Documents that refer or relate to the target market for the goods or services You have offered or intend to offer in connection with Applicant's Marks.

Request No. 24:

Please produce any non-privileged Documents that refer or relate to the recipients of any advertising or promotion You have produced or authorized in connection with Applicant's Marks, including in this regard (without limitation) any mailing lists for any direct mail advertising, any facsimile transmission logs for any facsimile advertising, and any email logs for any email marketing messages.

Request No. 25:

Please produce any non-privileged Documents that reflect, refer or relate to any studies, surveys, polls, reaction tests, or any other market research involving or regarding Applicant's Marks.

Request No. 26:

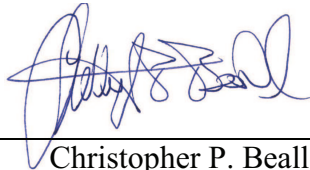
Please produce Documents sufficient to show the qualifications and experience of any witness through whom You expect to offer expert testimony pursuant to Federal Rule of Evidence 702.

Request No. 27:

Please produce any Document not already requested herein that You intend to rely upon in any way in these proceedings.

Respectfully submitted this 4th day of August, 2011.

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.



Christopher P. Beall
321 West 44th Street, Suite 510
New York, New York 10036
(212) 850-6100
E-mail - cbeall@lskslaw.com;
lapel@lskslaw.com; jcarlsen@lskslaw.com

Attorneys for Opposer
Showtime Networks Inc.

CERTIFICATE OF SERVICE

I do hereby certify that on this 4th day of August, 2011, a true and correct copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION** has been transmitted by United States Postal Service first class mail, postage prepaid, with a courtesy electronic copy also delivered by e-mail transmission, to:

Min Yi Chen
DMA International LLC
1602 Belle View Blvd., Suite 440
Alexandria, VA 22307-6531

Mallory Levitt, Esq.
CBS – Law Department
51 West 52nd Street
New York City, New York 10019
Mallory.Levitt@cbs.com; trademarks@cbs.com

/s Christopher P. Beall

Attachment 3

to

**DECLARATION OF CHRISTOPHER P. BEALL
IN CONNECTION WITH OPPOSER'S MOTION TO COMPEL**

(Email dated Aug. 31, 2011 from Christopher P. Beall to Min Yi Chen)

Christopher Beall

From: Christopher Beall**Sent:** Wednesday, August 31, 2011 2:41 PM**To:** 'dmaintllc@gmail.com'**Subject:** Showtime Networks v. DMA Int'l (TTAB Opp. No. 91199186) - Request for availability to discuss case

Dear Ms. Chen,

I am following up on our service from earlier this month of Showtime's discovery requests. I would like to see whether you are available for a phone call to discuss the status of this matter. With the deadline for DMA International's responses to Showtime's discovery requests coming up shortly, I wanted to make sure that we explored whether there might be any movement toward a resolution of this case. If so, it certainly would be better to try to work out such a settlement before your company invests the time and effort in preparing its discovery responses.

If you are available for such a call, please let me know and we can schedule a time.

Best wishes,
Chris Beall

Christopher P. Beall



321 West 44th Street
Suite 510
New York, NY 10036
(212) 850-6113 | Phone
(212) 850-6299 | Fax

1888 Sherman Street
Suite 370
Denver, CO 80203
(303) 376-2406 | Phone
(303) 376-2401 | Fax
Admitted in Colorado, New Mexico, and New York.
www.lskslaw.com

From: Christopher Beall**Sent:** Thursday, August 04, 2011 5:08 PM**To:** 'dmaintllc@gmail.com'**Cc:** 'Levitt, Mallory'; 'trademarks@cbs.com'; Lisa Appel**Subject:** Showtime Networks v. DMA Int'l (TTAB Opp. No. 91199186)

Please see the attached discovery materials, hard copies of which are being served by U.S. Mail in addition to the electronic copies contained here.

Christopher P. Beall



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9/29/2011

Attachment 4

to

**DECLARATION OF CHRISTOPHER P. BEALL
IN CONNECTION WITH OPPOSER'S MOTION TO COMPEL**

(Letter dated Sept. 19, 2011 from Christopher P. Beall to Min Yi Chen)

Monday, September 19, 2011

VIA EMAIL AND U.S. MAIL

Min Yi Chen
DMA International LLC
1602 Belle View Boulevard, Suite 440
Alexandra, VA 22307-6531
dmaintllc@gmail.com

**Re: Showtime Networks Inc. v. DMA International LLC, U.S.
Trademark Trial & Appeal Board, Opp. No. 91199186**

- **Complete Failure to Respond to Opposer's Discovery Demands**

Dear Ms. Chen:

This letter constitutes our request on behalf of Showtime Networks Inc., the Opposer in the above-captioned opposition, for full and complete responses of applicant DMA International LLC to Opposer's discovery demands, all of which were sent to you on August 4, 2011 by U.S. Mail and email.

This letter constitutes our effort to meet and confer with you, as required under Fed. R. Civ. P. 37(a)(1), with respect to the failure of Applicant to respond to Opposer's discovery demands prior to Opposer's seeking relief from the TTAB through a motion to compel.

We will expect full and complete responses to Opposer's discovery demands, in my hands (not just placed in the mail) before the close of business on Monday, September 26, 2011. In the absence of such timely response, you are hereby provided notice that we will thereafter file a motion to compel with the TTAB.

Regards,

LEVINE SULLIVAN KOCH & SCHULZ, LLP



By: _____
Christopher P. Beall

September 19, 2011
Page 2

cc: Mallory Levitt, Esq.
CBS Law Department